BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH
COMPOUNDING APPLICATION NO. 19/621A/NCLT/AHM/2016

PRESENT: SHRI M.K. SHRAWAT, MEMBER (JUDICIAL)

In the matter of Section 441 of the Companies Act, 2013 (corresponding Section 621A of the Companies Act, 1956) for violation of Section 209(3) of the Companies Act, 1956 (corresponding Section 128 of the Companies Act 2013).

In the matter of **M/s. Dishman Pharmaceuticals and Chemicals Limited**, having its Registered Office at Bhadra-Raj Chambers, Swastik Cross Road, Navrangpura, Ahmedabad 380 009, Gujarat, India.

PRESENT FOR APPLICANT:

Mr. Ashok P. Pathak, Practising Company Secretary for the Applicant.

Date of hearing: 9th December, 2016

ORDER
Reserved on: 09.12.2016
Pronounced on: 12.01.2017

Applicants in Default:

M/s. Dishman Pharmaceuticals and Chemicals Limited (Company), (1) Mr. Janmejay Rajnikant Vyas (Chairman and Managing Director), (2) Ms. Deohooti Janmejay Vyas (Whole-time Director), (3) Mr. Arpit Janmejay Vyas (Managing Director) and Mr. Tushar D. Shah (Company Secretary).

Section Violated:

Section 209(3) of the Companies Act, 1956.

Nature of Violation:

1. As per the submission in the Report of Deputy Registrar of Companies (Gujarat, Dadra ad Nagar Havelli), and as per the submissions made in the Compounding Application for violation of Section 209(3) of the Companies Act, 1956, during the course of an inspection of the Books of Accounts for the period ended 31st March, 2014 carried out by the Central Government u/s 206(5) of the Companies Act, 2013, it was observed and *inter alia*

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pointed out by the Inspecting Officer that the provisions of Section 209(3) of the Companies Act, 1956 has been violated as under:-

> *"On going through the consolidated balance sheet as at 31.03.2014, it is observed that:*
>
> *1. The company has not accounted for employee's pension benefits amounting to Rs. 5287.75 lacs (net of tax Rs. 1305.45 lacs). This would not be in compliance with the requirements of Accounting Standard (AS) 15 – employees benefits which requires pension plans to be treated as defined benefit obligations and the liabilities to be recorded using actuarial valuation methods as prescribed in the said Accounting Standard.*
>
> *2. The company has not provided for asset retirement obligations aggregating to Rs. 5156.25 lacs and its corresponding depreciation amounting to Rs. 1916.97 lacs (net of tax Rs. 473.27 lacs) related to its leased assets. This would not be in compliance with the requirements of Accounting Standard 29 – Provisions, Contingent Liabilities and Contingent Assets.*
>
> *Had the aforesaid amount of actuarial loss on employees benefit and asset retirement obligation been accounted for in the books of accounts, the profit as at 31.03.2014 would have been Rs. 3722.50 lacs (previous year ended 31.03.2013; Rs. 10,029.39 lacs) as against the reported figure of Rs. 10,927.22 lacs (previous year ended 31.03.2013; Rs. 10,029.39 lacs)."*

2. Accordingly, the applicant has violated the provision under Section 209(3) of the Companies Act, 1956. The Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) forwarded the Compounding Application vide his letter No. ROC/Guj/Compounding/Section 621A/8111 dated 1st December, 2016 and the same has been treated as Compounding Application No. 19/621A/NCLT/AHM/2016. The RoC has reported the offence as under:

> *"On going through the consolidated balance sheet as at 31.03.2014, it is observed that :*
>
> *(1) The company has not accounted for employee's pension benefits amounting to Rs. 5287.75 lacs (net of tax Rs. 1305.45 lacs). This would not be in compliance with the requirements*

of Accounting Standard (AS) 15 – employees benefits which requires pension plans to be treated as defined benefit obligations and the liabilities to be recorded using actuarial valuation methods as prescribed in the said Accounting Standard.

(2) The company has not provided for asset retirement obligations aggregating to Rs. 5156.25 lacs and its corresponding depreciation amounting to Rs. 1916.97 lacs (net of tax Rs.473.27 lacs) related to its leased assets. This would not be in compliance with the requirements of Accounting Standard 29 – Provisions, Contingent Liabilities and Contingent Assets.

Had the aforesaid amount of actuarial loss on employees benefit plan and asset retirement obligation been accounted for in the books of accounts, the profit as at 31.03.2014 would have been Rs. 3722.50 lacs (previous year ended 31.03.2013; Rs. 10,029.39 lacs) as against the reported figure of Rs. 10,927.22 lacs (previous year ended 31.03.2013; Rs. 10,029.39 lacs).

In view of the above the Financial Statements have not given a true and fair view of the state of affairs of the company, hence, company has violated the provisions of Section 209(3) of the Companies Act, 1956. (Corresponding Section 128 of the Companies Act, 2013)."

3. This Bench has gone through the Application of the Applicant and the Report submitted by the Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) and also the submissions made by Practising Company Secretary for Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 209(3) of the Companies Act, 1956 merits consideration. The Applicant has explained on receiving the impugned Notice as mentioned in the report of the Dy. Registrar of Companies that the statutory auditors of the Swiss subsidiary have not agreed upon regarding one of the qualifications observed in the financial statement for non-accounting of the employee's pension benefit or retirement obligation. Due to this disagreement, the alleged default was pointed out in the Notice dated 1st July, 2016. The Applicant Company, resident of India, by itself, was not at fault; hence seeking compounding of the default through this Application.

4. Under the old provisions of the Act, as applicable when this Compounding Application was filed in the year 2016, the relevant provision was Section 209(5) of the Companies Act, 1956, which is reproduced below:

> "Section 209 ....
> *(5) If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."*

5. Having regard to the facts and circumstances of the case, the offence committed under Section 209(3) of the Companies Act, 1956, as stated and explained in the above paragraphs, is compounded against the three Directors and the Applicant Company and the Company Secretary of the Applicant Company on payment of ₹1,000/- by Mr. Janmejay Rajnikant Vyas (Chairman and Managing Director), ₹1,000/- by Ms. Deohooti Janmejay Vyas (Whole-time Director), ₹1,000/- by Mr. Arpit Janmejay Vyas (Managing Director) and ₹1,000/- by Mr. Tushar D. Shah (Company Secretary). The remittance shall be made by way of Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Ahmedabad".

6. This Compounding Application No. 19/621A/NCLT/AHM/2016 is, therefore, disposed of on the terms directed above with a rider that the payment of the fine imposed be made within 15 days on receipt of this order. Needless to mention, the offence shall stand compounded subject to the remittance of the fine imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Ld. RoC shall take the consequential action. Ordered accordingly.

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Dated: 12.01.2017

Shri M.K. Shrawat
Member (Judicial)